

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 381

[Docket No. 94-022E]

RIN 0583-AB86

#### Use of the Term "Fresh" on the Labeling of Raw Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule; extension of comment period; solicitation of comments.

**SUMMARY:** On January 17, 1995, the Food Safety and Inspection Service (FSIS) proposed to amend the Federal poultry products inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26° F. FSIS is extending the comment period on the proposal for 60 days in order to: Allow time for public review and comment on the findings of the Agriculture Research Service's (ARS) evaluation of the sensory, chemical, and physical properties of raw poultry products that have been exposed to and held at temperatures from 0° F to 40° F; allow the National Advisory Committee on Microbiological Criteria for Foods the opportunity to comment on the proposed rule; and solicit public comments on options for reconciling the FSIS proposal to require a "previously frozen" disclosure on product whose internal temperature has ever been below 26° F with existing FSIS regulations that require poultry labeled as "frozen" to have been chilled to an internal temperature of 0° F or below.

**DATES:** Comments must be received on or before May 19, 1995.

**ADDRESSES:** Submit written comments in triplicate to Diane Moore, Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be

directed to Mr. Charles R. Edwards, (202) 254-2565.

**FOR FURTHER INFORMATION CONTACT:**

Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 254-2565.

**SUPPLEMENTARY INFORMATION:** On January 17, 1995, FSIS published a proposed rule (60 FR 3454) to amend the Federal poultry products inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26° F. The proposal would require such poultry products to be labeled with a descriptive term reflecting the fact that the product had been "previously frozen." The proposed action would help ensure that poultry products distributed to consumers are not labeled in a false or misleading manner and are not misbranded. Such action would also meet consumer expectations that the term "fresh" should not be applied to raw poultry products that have been subjected to processes that would cause such products to become chilled to temperatures below 26° F.

Interested persons were given until March 20, 1995, to submit comments on the proposed regulatory amendments. FSIS has received requests from two trade associations to extend the comment period for the proposed rule. The trade associations have requested that FSIS extend the comment period to allow the public time to obtain and review the findings of the Agricultural Research Service's (ARS) evaluation of the sensory, chemical, and physical properties of raw poultry products that have been exposed to and held at temperatures from 0° F to 40° F, with respect to their written comments on the proposed rule. The ARS report was not available for public review in the FSIS Docket Clerk's office at the time the "fresh" labeling proposal was published and, thus, its availability was not stated in the rulemaking docket. The report is now available for public review in the FSIS Docket Clerk's office, and FSIS concludes it is reasonable to allow additional time for interested parties to obtain, review, and comment on it.

Further, FSIS has previously stated its intention to seek comments from the National Advisory Committee on

Microbiological Criteria for Foods on the Agency's conclusion stated in the preamble to the proposed rule that "there should be no increased microbiological safety risks associated with the growth of pathogenic microorganisms," by changing the labeling definition for "fresh" poultry. The next meeting of the Committee will be held in mid-April and, thus, an extension of the comment period is necessary to allow the Committee's views to be received within the comment period.

Finally, in this notice, FSIS is soliciting comments on options for reconciling the element of its "fresh" labeling proposal that would require product whose internal temperature has ever been below 26° F to bear a "previously frozen" disclosure with existing FSIS regulations (9 CFR 381.129(b)(3) and 381.66(f)(2)) that require poultry labeled as "frozen" to have been chilled to an internal temperature of 0° F or below. Under the proposal, product chilled to an internal temperature of 0° F or below could be labeled as "frozen" or "previously frozen," as the case may be.

FSIS has received a comment noting the conflict between the proposal and the existing regulatory definition of "frozen." FSIS is aware that the products directly affected by its "fresh" labeling proposal, which are frequently frozen to temperatures in the range of 20° F to 25° F and sold in a thawed state have different attributes than product frozen to an internal temperature of 0° F or below. The product chilled to temperatures in the range of 20° F to 25° F is hard-to-the-touch and thus "frozen" in common consumer parlance, even though only about 80 percent of the water in that product is frozen. Further, although the product exhibits a longer shelf life than product held at higher temperatures, e.g., 28° F to 32° F, the product will spoil in several weeks. In the product frozen to 0° F or below, over 99 percent of the water in the product is in a frozen state, microbial growth is stopped, and the product can last a year or more, depending on packaging and storage temperature, without discernable quality changes. The purpose of the existing definition of "frozen" is to ensure that poultry products labeled simply as "frozen" would be suitable for long-term storage and subsequent use. The terms

"frozen," as currently defined in FSIS regulations, and "previously frozen," as proposed by FSIS for use on poultry products held below 26° F and subsequently sold in a thawed state, both would provide truthful and useful information to consumers. FSIS is concerned that the existence of two definitions which make use of the word "frozen" could be confusing to industry and consumers. FSIS believes that the existing definition and the Agency's proposed use of the term "previously frozen" need to be reconciled. The Agency invites comments on how this can be accomplished. FSIS has identified three possible options as follows:

a. Use a term or phrase other than "previously frozen" to identify products in the temperature range from above 0° F to below 26° F. In its proposed rule, FSIS requested comments on other descriptive terms to describe the nature of the product. However, as of this time, no satisfactory substitute terms have been suggested. FSIS has identified other possible terms that do not use the unqualified word "frozen." Such terms include: "previously semi-frozen," "held semi-frozen," "previously partially frozen," "previously chilled to semi-solid state," "shipped/stored/handled semi-frozen (insert optional statement, e.g., to preserve quality)," or "previously frosted." FSIS continues to be interested in receiving comments on alternate terms including those that do not contain the unqualified word "frozen."

b. Eliminate the current requirement that poultry products labeled as "frozen" must be brought to an internal temperature of 0° F or below and require use of the term "frozen" to identify all poultry products whose internal temperature has ever been below 26° F. This option would eliminate any confusion that might be caused by having more than one temperature associated with products whose labels make use of the word "frozen," and satisfy the need to label appropriately all products that have been chilled to the point where they are hard-to-the-touch. Such action would in no way prevent manufacturers from continuing current practices regarding freezing to 0° F for long-term storage or from making supportable claims about the storage life or appropriate "use by" date for their products. However, such action might require adjustment in government and industry purchasing standards, codes of practice, or product specifications that evolved from the current freezing regulations. FSIS does not believe that elimination of the 0° F requirement for labeling a product "frozen" would pose

a safety concern. However, purchasers who expect that a product was frozen for long-term preservation based on use of the term "frozen" on the labeling might be misled in the absence of explanatory labeling, if the shelf life and quality differs from products frozen to 0° F or below because the product was not actually brought to such low temperatures.

c. Use the proposed term "previously frozen" on labeling of products with internal temperatures above 0° F and below 26° F but require use of a term other than "frozen" or "previously frozen" on the labeling of products that are frozen to 0° F or below. The latter products could be labeled with a phrase such as "frozen for long-term preservation" in order to distinguish them clearly from chill pack products whose temperatures were at one time in the lower 20-degree Fahrenheit range. This labeling option differentiates the two types of frozen products so that the product labeled "previously frozen" would not be confused with the deep-frozen product. The descriptive term for the 0° F product reflects the purpose of the processing procedure and can be linked to the special qualities associated with these products.

FSIS is interested in receiving comments on these options and any others that would appropriately reconcile the existing definition of "frozen" and the proposed use of the term "previously frozen."

For all these reasons, FSIS is extending the comment period on its "fresh" labeling proposal for 60 days. The comment period will close May 19, 1995.

Done at Washington, DC, on: March 15, 1995.

**Michael R. Taylor,**

*Acting Under Secretary for Food Safety.*

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

RIN 3150-AE97

### Shutdown Operation of Nuclear Power Plants; Notice of Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** Members of the staff of the Office of Nuclear Reactor Regulation will meet with commenters (or their representatives) who responded to

**Federal Register**, 59 FR 52707; October 19, 1994, regarding the proposed rule "Shutdown and Low-Power Operations for Nuclear Power Reactors." The staff will discuss comments and receive feedback on the impact of potential staff responses regarding the proposed rule. The meeting will be open for interested members of the public, petitioners, intervenors, or other parties to attend as observers pursuant to "Open Meeting Statement of NCR Staff Policy," 43 FR 28058, June 28, 1978.

**DATES:** The meeting will be Friday, April 7, 1995 from 9 a.m.-3 p.m.

**ADDRESSES:** The meeting will be held at the United States Nuclear Regulatory Commission Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Warren C. Lyon, Senior Reactor Systems Engineer, Reactor Systems Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-3892.

**SUPPLEMENTARY INFORMATION:** The preliminary agenda for the proposed meeting is:

9:00—Introduction (Purpose of shutdown rule, Applicability/limitations)

9:15—Summary of Comments to Proposed Rule 59 FR 52707; October 19, 1994

9:30—Staff Decisions (Shutdown rule, Maintenance Rule, Codification of industry initiatives, Fire, Technical specifications, Outage plans and controls, Fuel storage pool, Safety related vs. non-safety related, Single failure, Regulatory analysis, Regulatory guide, Re notice in **Federal Register**)

10:15—Items Covered By Rule (General content of rule and philosophy; Structures, systems, and components; Reliability and redundancy; Planning; Procedures; Training; Controls; Reactivity; Reactor coolant system; Subcooled decay heat removal; Containment; Adequate core cooling; Contingency plan; Implementation)

13:15—Discussion—Issues (Maintenance rule—guidance for shutdown operation; The meaning of redundancy [Credit for passive heat removal, gravity feed, & operator response; Electrical power systems]; Containment; Analysis and test needs; Others)

Dated at Rockville, Maryland this 15 day of March 1995.